IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 28333 of 2007(W)

AGAINST THE ORDER IN EP. 251 /2004 IN OS.187/1998 of PRL.SUB COURT,TRIVANDRUM

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PETITIONERS:

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1. RAJESWARI MOHAN, C2,
   GEE SEE APARTMENTS, CST ROAD, KALIMA SANTACRUZ,
   BOMBAY.

2. BHAMA PANICKER,
   RESIDING AT BLOCK NO.1, DHAROOD APARTMENTS,
   EDALJI ROAD, CHARAI, THANA.

3. MANOHARAN,
   BLOCK NO.44, BUILDING NO.1, RAMA MADHAVAM,
   HOUSING SOCIETY LTD., SRINAGAR ESTATE.

BY ADV. SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW

RESPONDENT:

ALIND, REPRESENTED BY ITS
MANAGING DIRECTOR, UTHARASIROMONY ROAD,
THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/09/2007 ALONG WITH WPC 28357/078, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).Nos.28333 & 28357/2007

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Dated this the 25th day of September, 2007.

JUDGMENT

Both these Writ Petitions are filed against the order of the Subordinate Judge, Thiruvananthapuram whereby he had dismissed the execution applications on the ground that the proceedings are pending before AAIFR. The decree holder would contend that the court should not dismiss the execution petitions because Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the Act") only contemplates suspension of legal proceedings, contracts, etc.

2. The judgment debtor has approached the BIFR as a sick unit and had filed a claim for revival. It appears that an order was passed against them and they had challenged the said order before the AAIFR under Section 25 of the Act. The court below found that there is a specific bar and therefore dismissed the execution petitions. Section 22 of the Act certainly prevents action when the matter is pending before BIFR or AAIFR as the case may be, and it provides a clause whereby the sick unit can be proceeded with further only with the consent of the Board or as the case may be, the Appellate Authority. So until and unless there is a finality to the proceedings under the Sick Industrial

(Special Provisions) Act, 1985 the execution proceedings cannot be proceeded with. It is true that the words used are suspension of legal proceedings. There is no need to indefinitely postpone the execution petitions and filing of a fresh petition is not a bar under the provisions of law for execution. If the decree holder wants to proceed with the matter, he has to get consent of the Board as contemplated under Section 22 of the Act.

3. Therefore, these Writ Petitions are disposed of with liberty to the writ petitioners to file fresh execution proceedings wherein it can also pray for issuance of notice to the Board or the Appellate Authority for the consent as enumerated in Section 22 of the Act and thereafter proceed in accordance with law and the relevant provisions under the Act as well.

M.N.Krishnan,
Judge.

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